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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,377	01/02/2002	Jeffrey A. Perkins	11694/04169	1144

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EXAMINER

TADESSE, YEWEBDAR T

ART UNIT	PAPER NUMBER
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1734

DATE MAILED: 08/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/039,377

Applicant(s)

PERKINS ET AL.

Examiner

Yewebdar T Tadesse

Art Unit

1734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Double Patenting

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101, which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 1-2 and 8 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 3-4 of prior U.S. Patent No. 6,379,465. This is a double patenting rejection.

As to claim 1, claims 3-4 of US'465 claim a coating system having a plurality of spray guns and a controller for the spray guns, the controller comprising a master control panel and a selector for selecting one of the guns to be controlled or monitored by the master control panel, wherein each gun has a gun control subpanel and wherein the gun control subpanels are located adjacent to the master control panel (see claim 4 for the location). As to claim 2, claim 3 of US'465 teaches each gun control subpanel comprising a location near other gun control subpanels (the gun control subpanels are located adjacent one another) so as to configure the gun control subpanel in group for easy comparison (the characteristics of the gun associated with the gun control subpanels can be viewed together). As to claim 8, claim 3 of US'465 teaches each gun

control subpanel having a display for displaying the electrical characteristics of the gun associated with the control panel.

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claim 7 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 3-5 of U.S. Patent No. 6,379,465 as applied to claim 1 above and further in view of Bienduga (US 5,443,642). '465 lacks claiming the master control panel comprising a display for monitoring or controlling selected guns. Bienduga discloses (see Fig 3) a display (700) for the master control unit. It would have been obvious at the time the invention was made to include a display for the master control unit in '465 to easily monitor all important characteristics of the selected gun from one display unit as shown by Bienduga.

5. Claims 9-10, 12 and 14-15 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 3-4 of U.S.

Patent No. 6,379,465 in view of Bienduga (US 5,443,642). As to claims 9-10 and 14, reasons stated for claim 1 rejection (see above) are applied. A master control panel comprising a display for monitoring or controlling selected guns is not taught in claim 3 of '465. Bienduga discloses (see Fig 3, columns 8-9, lines 66-68 and 1-37 respectively) a display (700) for the master control unit configured for monitoring selected gun. It would have been obvious at the time the invention was made to include a display for the master control unit in '465 to easily monitor all important characteristics of the selected gun from one display unit as shown by Bienduga. With respect to claim 12, claim 3 of US'465 teaches each gun control subpanel comprising a location near other gun control subpanels (the gun control subpanels are located adjacent one another) so as to configure the gun control subpanel in group for easy comparison (the characteristics of the gun associated with the gun control subpanels can be viewed together). As to claim 15, claim 4 of US '465 teaches gun control subpanels located adjacent to the master control panel.

6. Claims 6, 13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 3-4 of U.S. Patent No. 6,379,465 and Bienduga (US 5,443,642) as applied to claim 1 and 9 above and further in view of Crum et al (US 5,718,767). A selector comprising a location on a gun control subpanel is not taught in US '465. Crum et al discloses (see Fig 1 and column 8, lines 2-11) a selector (address switches 108) located on a gun control subpanel (gun control #1, 38). It would have been obvious at the time the invention was made to include the

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selector on the gun control subpanel for the operator to identify the particular gun as taught by Crum et al.


7. Claims 3-5 and 11 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 3-4 of U.S. Patent No. 6,379,465 and Bienduga (US 5,443,642) as applied to claim 1 and 9 above and further in view of Buckler et al (US 5,755,884) and Honma (US 4,607,587). US '465 teaches a LED bar graph display for displaying the electrical characteristics of the gun controlled. Meanwhile, a plurality of LED displays is not claimed in '465. The use of a plurality of LED displays for the control panel is well known in the art; for instance – Buckler et al a plurality of LED displays 350 for control panel (see Fig 9 and column 17, lines 61-66). Honma discloses LED displays 32 and 33 (see Fig 7 or column 3, lines 1-9) for control apparatus. It would have been obvious at the time the invention was made to include a plurality of LED display in '465 to indicate the status of a plurality of functions of the device (in this case a coating gun).

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yewebdar T Tadesse whose telephone number is (571) 272-1238. The examiner can normally be reached on Monday-Friday 8:00 AM-4: 30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Fiorilla can be reached on (571) 272-1187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Levinthal G-T
YTT


LAURA EDWARDS
PRIMARY EXAMINER